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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-649

RAYMON CAAMANA,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petitioner, Raymon Caamana, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this proceeding on September 15, 1971.

Opinion Below

No opinion was rendered by the United States Court of Appeals for the Second Circuit. The opinion of the United States District Court for the Southern District of New York, delivered in rendering the verdict in this case, is contained in the appendix on appeal.

Jurisdiction

The judgment for the Court of Appeals for the Second Circuit was entered on September 14, 1971. A timely application for an extension of time in which to file the petition for certiorari was made on October 13, 1971 and granted by Mr. Justice MARSHALL, and this petition for certiorari was filed within the thirty days' extension.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

Question Presented

Was independent police verification of the type approved in *Draper* v. *United States,* 358 U.S. 307 (1959) sufficient to corroborate information from an informer and establish probable cause where, in contrast to *Draper,* the informer was unreliable and his identity undisclosed?

Statement of the Case

The petitioner, Raymon Caamana, was convicted in the United States District Court for the Southern District of New York (RYAN, J.) on March 16, 1971 of receiving, concealing and facilitating the transportation and concealment of a narcotic drug imported into the United States in violation of Title 21 U.S.C. Sections 173 and 174. He was sentenced to five years in prison. The conviction was affirmed without opinion by the United States Court of Appeals for the Second Circuit on September 14, 1971.

Petitioner is presently in prison.

Statement of the Facts

The Government's Case

The motion to suppress and the trial evidence were heard together at the trial.

Prior to May 28, 1969, the date of petitioner's arrest, Agent Thomas F. O'Grady had known the confidential informer for nine months (65a).* During this period the agent met the informer approximately fifteen or twenty times and received "intelligence information" (65a). However, while the informer information was "generally about the traffic" in drugs, "it was nothing where I was able to specifically go out and verify it" (70a). On one occasion, the agents procured a search warrant for the apartment of one Bernardi, a well known narcotics violator (65a-66a). The object of the search was two ounces of heroin, which, the informer related, would be in Bernardi's apartment (63a, 67a). No drugs were found in the apartment when the warrant was executed on April 2, 1969 (62a, 67a). While glassine envelopes and a large amount of rubberbands were located during the search (63a), Bernardi told the officers that he was soon to be sentenced in a State case, and hadn't had any narcotics for three weeks (65a). No arrest was made (66a).

Prior to May 27, 1969, the informant reported to Agent O'Grady that he was negotiating for the purchase of a quantity of heroin from an individual named "Fif". The informant said he had met "Fif" through the auspices of an Anthony Oliva, an imprisoned narcotics violator who

* References are to petitioner's appendix in the Court of Appeals.

had previously been arrested by Agent O'Grady (53a-55a, 68a). Oliva had told the informant that another prisoner, Sperling, said that "Fif" was working for him (54a). The informant had met "Fif" on several occasions at the corner of 60th Street and Lexington Avenue in New York City. He supplied the agent with "Fif's" physical description, his telephone number and license plate number. A perfunctory check revealed that "Fif" was the petitioner, Raymon Caamana, who resided at 312 East 116th Street in New York City and who was the registered owner of a 1969 green Buick (55a-56a, 59a). The informer identified a photograph of Caamana as "Fif" (56a).

An effort was made to trap the petitioner into selling contraband to an undercover agent. This was resisted. It was alleged that Caamana would only sell directly to the informant. The informant was, therefore, advised by Agent O'Grady to order heroin (53a, 55a).

During the evening of May 27, 1969 the informant told the agent that an order for an eighth of a kilogram of heroin had been placed and that Caamana would contact him later to disclose the time and place of delivery (53a, 57a).

On May 28, 1969 other agents established surveillance of Caamana's car and residence. O'Grady, at the informant's apartment, monitored a call and gleaned that the informant and "Fif" would meet at "the usual place" at 2:00 P.M. (17a, 58a-59a). The "usual place" was 60th Street and Lexington Avenue in New York City (59a).

O'Grady rejoined his brother agents who were conducting surveillance at the Caamana residence (17a-20a). At

about 12:30 P.M. Caamana was seen entering his car and leaving. The agents followed but soon lost the trail. The agents drove to 60th Street and Lexington Avenue where, at about 2:00 P.M., the petitioner appeared driving south on Lexington Avenue (20a-21a, 36a-37a). Caamana was arrested while awaiting a change of traffic lights at Park Avenue and 60th Street (20a-21a, 36a-37a). A search of the vehicle uncovered approximately 123.9 grams of heroin, concealed externally in the left rear fender housing (21a-22a, 32a, 42a, 52a, 70a-71a).

The petitioner presented no evidence.

Reasons for Granting the Writ

I. The arrest of petitioner and search of his automobile were unlawful, the informant being unreliable and unnamed and his information insufficiently verified to establish probable cause.

In informer cases the initial inquiries are directed to an assessment of the credibility of the informer and the reliability of his information [*Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Spinelli* v. *United States*, 393 U.S. 410 (1969)]. Here, there was no proof that the undisclosed informer was reliable. Indeed, his past performances show him to be basically unreliable.

In the nine months during which the informer had worked with the agents in this case, he had given only general information. In this information, the agent admitted, there was "nothing where I was able to specifically go out and verify it" (70a). Indeed, the only instance in

which the informer's information seemed adequate to act upon, the results were hardly encouraging. For the informer had simply told the authorities about a well known drug dealer (65a-66a), adding that heroin could be found in his apartment. Upon execution of a search warrant, however, no drugs were found and no arrest was made. The search merely confirmed what the police already knew —that the subject of the search had been a drug dealer. The informer's information, that drugs were present, was at least three weeks out of date (61a-66a). In this posture, the agents could hardly consider their informant reliable. Nine months of informing had produced no verifiable information. Indeed, it appears that if the informer was for some reason trying to stay within the good graces of the authorities by his continued reporting, he was also playing a double game. For either he was not in a position to receive reliable information, or he was carefully concealing what he knew, relating only information which could not be checked or would prove stale or worthless. Indeed, nothing can be added to his reliability because of the source of his information regarding Caamana. In contrast, for instance, to *United States* v. *Harris,* 39 U.S.L.W. 4835 (June 28, 1971), the informer here never purchased contraband from the petitioner, nor did he ever see the petitioner with contraband. Obviously, then, in assessing probable cause for the present case, there can be no buttressing through reliance on the informer's reliability. Rather a more rigorous independent corroboration of his communications had to be sought. Yet the corroboration in the present case was wholly inadequate.

The independent verification by the authorities have verified only that the petitioner would meet with the in-

former at "the usual place" at 2 p.m. (17a, 58a-59a). The usual place, the informer explained, was Lexington Avenue and 60th Street (59a). And surveillance located Caamana in his car in the vicinity at the appointed time. The confirmation of an intended meeting, however, is far from independent verification that Caamana was a drug dealer about to sell narcotics. Had the agents, as might be expected, observed a transfer of drugs at the meeting place, or found the informer with the drugs immediately after the meeting [see, *Lewis* v. *United States,* 385 U.S. 206 (1966)], probable cause would be established to arrest the petitioner. But, significantly, the officers were too precipitate in their actions, and descended upon Caamana while he was still in his car stopped for a red light, before any meeting with the informer took place. At this point all the information coloring Caamana's actions as criminal derived solely from the informer. Nothing that the agents independently discovered verified what the meeting would be for, or whether Caamana had drugs with him when the arrest took place. And though the agents had a detailed description of the petitioner and of his car, and knew where he would be, their verification differs radically in sufficiency from *Draper* v. *United States,* 358 U.S. 307 (1959). For although in *Draper* verification of description and timing was considered adequate, it was only adequate to verify the information of a reliable and named informer. Here, where the informer is unreliable and undisclosed the standard of corroboration needed is significantly higher [see, *Spinelli* v. *United States,* 393 U.S. 410, *supra*]. Consequently, the arrest of the petitioner and search of his car was not based on probable cause when it was made, the agents insufficiently verifying information from an undisclosed informer of no past reliability.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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